

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0850-AGR-E TCEQ ID: RN102334661 CASE NO.: 33628
RESPONDENT NAME: HORIZON DAIRY

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AGR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 4483 East FM 219, Hico, Hamilton County, Texas</p> <p>TYPE OF OPERATION: Concentrated Animal Feeding Operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 28, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Mr. Barham Richard, Litigation Division, MC 175, (512) 239-0107 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Water Enforcement Section, MC 169, (512) 239-1364</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901</p> <p style="margin-left: 20px;">Respondent: Mr. David DeJong, Partner, Horizon Dairy, 4483 East Farm-to-Market Road 219, Hico, Texas, 78701</p> <p style="margin-left: 20px;">Respondent's Attorney: Mr. Ali Abazari, Jackson Walker, L.L.P., 100 Congress Avenue, Suite 1100, Austin, Texas 78701</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p> <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review </p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: April 19, 2007</p> <p>Date of NOE Relating to this Case: May 6, 2007</p> <p>Background Facts:</p> <p>An EDPRP was filed on September 10, 2007. The Respondent received notice of the EDPRP on September 12, 2007, as evidenced by the signature on the return receipt "green card." The Respondent filed an answer on October 2, 2007. It was referred to SOAH on November 2, 2007. An Agreed Order was signed by the Respondent on December 4, 2007. A Motion to Remand was filed and granted on December 12, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>AGR</p> <p>Failed to obtain authorization under a water quality individual permit for a concentrated animal feeding operation (CAFO) where any part of the production area or land management units (LMU) are located in a watershed of a segment listed on the current United States Environmental Protection Agency (EPA) approved 303(d) list of impaired water bodies and where a total maximum daily load (TMDL) implementation plan has been adopted [30 TEX. ADMIN. CODE § 321.33(b)(4)].</p>	<p>Total Assessed: \$2,020</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,020</p> <p>The Respondent has paid the administrative penalty in full.</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor </p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days submit an administratively complete CAFO individual permit application. 2. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such request or by any other deadline specified in writing. 3. Within 45 days submit written certification of compliance with the above Ordering Provision No. 1. 4. Within 180 days, submit written, notarized certification that either authorization under water quality CAFO individual permit has been obtained, that the number of mature dairy cattle has been reduced to less than 200, or that operation has ceased until appropriate authorization is obtained.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 25, 2007

DATES	Assigned	14-May-2007	Screening	30-May-2007	EPA Due	
	PCW	15-Aug-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Horizon Dairy
Reg. Ent. Ref. No.	RN102334661
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33628	No. of Violations	1
Docket No.	2007-0850-AGR-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Lynley Doyen
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	1% Enhancement	Subtotals 2, 3, & 7	\$20
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Notes: The penalty is enhanced due to one prior NOV with violations not same or similar to those cited in this action and reduced for one notice of intent to conduct a self-audit.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts	\$671	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$12,000	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,020
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$2,020
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,020
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$2,020
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Screening Date 30-May-2007

Docket No. 2007-0850-AGR-E

PCW

Respondent Horizon Dairy

Policy Revision 2 (September 2002)

Case ID No. 33628

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102334661

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	1	-1%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 1%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty is enhanced due to one prior NOV with violations not same or similar to those cited in this action and reduced for one notice of intent to conduct a self-audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 1%

Screening Date 30-May-2007 Respondent Horizon Dairy Case ID No. 33628 Reg. Ent. Reference No. RN102334661 Media [Statute] Water Quality Enf. Coordinator Lynley Doyen Violation Number 1 Rule Cite(s) 30 Tex. Admin. Code § 321.33(b)(4)	Docket No. 2007-0850-AGR-E <div style="text-align: right;">PCW</div> <div style="text-align: right; font-size: small;"> Policy Revision 2 (September 2002) PCW Revision May 25, 2007 </div>																				
Violation Description <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> Failed to obtain authorization under a water quality individual permit for a concentrated animal feeding operation ("CAFO") where any part of the production area or land management units ("LMU") are located in a watershed of a segment listed on the current United States Environmental Protection Agency ("EPA") approved 303(d) list of impaired water bodies and where a total maximum daily load ("TMDL") implementation plan has been adopted. Specifically, Horizon Dairy is currently authorized under a CAFO general permit. During the April 19, 2007, it was determined that part of the Facility's production area and LMUs are located within the watershed that drains to Segment 1226 of the North Bosque River, which is currently listed on the 303(d) list of impaired waters and has a TMDL implementation plan in effect, which requires the Facility to operate under a CAFO individual permit. </div>																					
Base Penalty \$10,000																					
>> Environmental, Property and Human Health Matrix																					
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 25%;">Major</th> <th style="width: 25%;">Moderate</th> <th style="width: 25%;">Minor</th> <th style="width: 10%;"></th> </tr> </thead> <tbody> <tr> <td>Release</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Potential</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p style="text-align: right; margin-top: 5px;">Percent 0%</p>		Major	Moderate	Minor		Release					Actual					Potential				
	Major	Moderate	Minor																		
Release																					
Actual																					
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>> Programmatic Matrix																					
Matrix Notes	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Falsification</th> <th style="width: 25%;">Major</th> <th style="width: 25%;">Moderate</th> <th style="width: 25%;">Minor</th> <th style="width: 10%;"></th> </tr> </thead> <tbody> <tr> <td></td> <td style="text-align: center;">x</td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p style="text-align: right; margin-top: 5px;">Percent 10%</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px; text-align: center;"> 100% of the rule requirement was not met. </div>	Falsification	Major	Moderate	Minor			x													
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Adjustment \$9,000																					
\$1,000																					
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<div style="border: 1px solid black; padding: 5px;"> Two monthly events are recommended based on the date of the investigation (April 19, 2007) through the date of screening (May 30, 2007). </div>																					
Economic Benefit (EB) for this violation																					
<table style="width: 100%;"> <tr> <td style="width: 50%;"> Estimated EB Amount \$671 </td> <td style="width: 50%;"> Violation Final Penalty Total \$2,020 </td> </tr> </table>		Estimated EB Amount \$671	Violation Final Penalty Total \$2,020																		
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This violation Final Assessed Penalty (adjusted for limits) \$2,020																					

Economic Benefit Worksheet

Respondent Horizon Dairy

Case ID No. 33628

Reg. Ent. Reference No. RN102334661

Media Water Quality

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$12,000	19-Apr-2007	31-May-2008	1.1	\$671	n/a	\$671
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit a technically complete permit application. Associated expenses include application fee, site survey, and engineering certifications. Date Required is the investigation date. Final Date is the expected date that authorization will be obtained.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$12,000

TOTAL

\$671

Compliance History

Customer/Respondent/Owner-Operator:	CN600515142	Horizon Dairy	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN102334661	HORIZON DAIRY FARM	Classification: HIGH	Site Rating: 0.00
ID Number(s):	WASTEWATER AGRICULTURE WASTEWATER AGRICULTURE WASTEWATER AGRICULTURE PETROLEUM STORAGE TANK REGISTRATION		PERMIT REGISTRATION PERMIT REGISTRATION	WQ0003672000 TPDESR012187 TXG920332 77207
Location:	N SIDE OF FM 219, APPRX 3 1/2 M S OF INTX OF FM 219 & US HWY 281, HAMILTON CO, TX		Rating Date: September 01 06 Repeat Violator: NO	
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	May 29, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 29, 2002 to May 29, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name: Lynley Doyen	Phone: 512-239-1364			

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 1 08/26/2003 (34112)
 2 02/03/2004 (260401)
 3 05/10/2005 (380002)
 4 05/23/2006 (463423)
 5 04/12/2007 (542767)
 6 05/08/2007 (559600)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/26/2006 (463423)

Self Report? NO
 Citation: 30 TAC Chapter 321, SubChapter B 321.46(e)(1)
 Rqmt Prov: OP TXG920332/Part IV.B(1)
 Description: Failure to submit the annual report to the appropriate TCEQ regional office and the Office of Compliance and Enforcement, Enforcement Division by February 15 of the year. TXG920000 Part IV.B(1)

Classification: Minor

- F. Environmental audits.

Notice of Intent Date: 07/07/2003 (251190)
 No DOV Associated

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
HORIZON DAIRY;
RN102334661

§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0850-AGR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Horizon Dairy ("Horizon") under the authority of TEX. WATER CODE chs. 7 and 26, and 30 TEX. ADMIN. CODE chs. 70 and 321. The Executive Director of the TCEQ, represented by the Litigation Division, and Horizon represented by Mr. Ali Abazari of the law firm Jackson Walker L.L.P., appear before the Commission and together stipulate that:

1. Horizon owns and operates a concentrated animal feeding operation located at 4483 East FM 219, Hico, Hamilton County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Horizon agree that the Commission has jurisdiction to enter this Agreed Order, and that Horizon is subject to the Commission's jurisdiction.
4. Horizon received notice of the violations alleged in Section II ("Allegations") on or about May 11, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Horizon of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of two thousand twenty dollars (\$2,020.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Horizon has paid two thousand twenty dollars (\$2,020.00) of the administrative penalty.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Horizon have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Horizon has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

Horizon is alleged to have violated 30 TEX. ADMIN. CODE § 321.33(b)(4) as documented on April 19, 2007, by failing to obtain authorization under a water quality individual permit for a concentrated animal feeding operation ("CAFO") where any part of the production area or land management units ("LMU") are located in a watershed of a segment listed on the current United States Environmental Protection Agency ("EPA") approved 303(d) list of impaired water bodies and where a total maximum daily load ("TMDL") implementation plan has been adopted. Specifically, Horizon Dairy is currently authorized under a CAFO general permit. During the April 19, 2007, it was determined that part of the Facility's production area and LMUs are located within the watershed that drains to Segment 1226 of the North Bosque River, which is currently listed on the 303(d) list of impaired waters and has a TMDL implementation plan in effect, which requires the Facility to operate under a CAFO individual permit.

III. DENIALS

Horizon generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Horizon pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Horizon's compliance with all the terms and conditions set forth in this Agreed Order resolve only the

Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Horizon Dairy, Docket No. 2007-0850-AGR" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Horizon shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, Horizon shall submit an administratively complete CAFO individual permit application pursuant to 30 TEX. ADMIN. CODE § 321.34 to:

Agriculture Core, Wastewater Permitting Section
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

- b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such request or by any other deadline specified in writing;
- c. Within 45 days after the effective date of this Agreed Order, Horizon shall submit written certification of compliance with Ordering Provision No. 2.a., as described in Ordering Provision No. 2.e. below;
- d. Within 180 days after the effective date of this Agreed Order, Horizon shall submit written certification that either authorization under water quality CAFO individual permit has been obtained, that the number of mature dairy cattle has been reduced to less than 200, or that operation has ceased until appropriate authorization is obtained, as described in Ordering Provision No. 2.e. below; and
- e. The certification shall include detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.d. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Horizon shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.d. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Sid Slocum, Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2301 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Horizon. Horizon is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Horizon fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Horizon's failure to comply is not a violation of this Agreed Order. Horizon shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Horizon shall notify the Executive Director within seven days after Horizon becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Horizon shall be made in writing to the Executive Director. Extensions are not effective until Horizon

receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Horizon in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Horizon, or three days after the date on which the Commission mails notice of the Order to Horizon, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

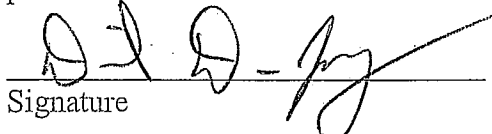
4/29/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or Horizon Dairy's failure to timely pay the penalty amount, may result in:

- A negative impact on Horizon Dairy's compliance history;
- Greater scrutiny of any permit applications submitted by Horizon Dairy;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Horizon Dairy;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Horizon Dairy; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution



Signature

12-04-2007
Date

David De Jong

Name (Printed or typed)
Authorized representative of
Horizon Dairy

Partner

Title